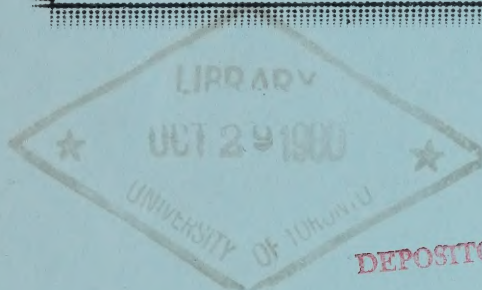


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LOCAL GOVERNMENT

BULLETIN 42

A GUIDE TO THE EMPLOYMENT STANDARDS ACT



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Ontario Ministry of Intergovernmental Affairs

Hon. Thomas L. Wells
Minister

D.W. Stevenson
Deputy Minister

Local Government Division
Municipal Administration Branch


August 1980

To the Municipal Clerk:

Please circulate this bulletin or make copies for distribution to councillors or staff of your municipality who may be interested in the subject. Additional copies are available at a dollar each from the Publications Centre (see page 25).

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
WHO IS COVERED	3
HOURS OF WORK	5
MINIMUM WAGE	6
PUBLIC HOLIDAYS	8
OVERTIME PAY	11
VACATION PAY	13
EQUAL PAY FOR EQUAL WORK	14
BENEFIT PLANS	15
PREGNANCY LEAVE	16
TERMINATION OF EMPLOYMENT	18
RECORDS	20
GENERAL	21
FINALLY ...	22



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INTRODUCTION

The Employment Standards Act was introduced in its present form in Ontario in 1968. Previously, there had been some legislation in effect covering certain working conditions; The Hours of Work and Vacations with Pay Act and The Minimum Wage Act were two that were repealed when The Employment Standards Act came into force. But The Employment Standards Act was the first to take a comprehensive approach to working conditions and was a major step forward in labour legislation in this Province.

The Employment Standards Act was enacted to make sure that employees in this Province would be treated fairly and have reasonable conditions under which to work and would not be taken advantage of by employers either deliberately or inadvertently. The Act, which has been amended several times since its introduction in order to keep pace with rapidly changing times, is much more thorough than was previous legislation. It covers the subjects of payment of wages, hours of work, minimum wages, overtime pay, public holidays, vacation with pay, equal pay for equal work, benefit plans, pregnancy leave, termination of employment, and related matters.

While the Act is not difficult to understand for someone who needs to refer to it on a frequent basis, it can be confusing and create problems for those who have a small number of employees and consequently do not need to use it quite so often. The purpose of this bulletin, then, is to examine and explain those provisions of the Act that are most likely to affect municipalities. It is to help overcome situations where some municipalities may unwittingly be contravening some sections of the Act.

There is one very important fact that must be kept in mind when reading this bulletin or when referring to the Act itself. The standards contained in the Act are minimum standards only and, if provisions contained in a municipality's employment policy or practice, or in a collective agreement with employees, or in another statute are more

beneficial to the employee, they may not be reduced; the provision which is more beneficial to the employee will prevail.

It is also important to keep in mind that this bulletin has been prepared as a quick and convenient source of information for municipalities. It does not represent the entire contents of the Act and the many Regulations made under the Act. It is, however, a synopsis of those aspects of the Act and Regulations that pertain to municipalities.

The bulletin was prepared from information that was accurate to mid 1980, but the actual statute should be consulted for precise reference. This is particularly true because the Act and/or the Regulations may change from time to time.

Finally, the Employment Standards Act is not the only legislation governing the workplace and the employment of people by municipalities. Other statutes that apply, and with which municipalities should be familiar, include The Municipal Act, The Human Rights Code and The Occupational Health And Safety Act.

WHO IS COVERED

The Employment Standards Act applies to every municipality in the Province of Ontario. It applies to most municipal employees as well; however, there are some very important exceptions. The most prominent of these are policemen employed by municipalities -- they are completely exempt from the provisions of the Act.

In addition, the following classes of employees, applicable in some municipalities, are exempt from those parts of the Act relating to hours of work, minimum wages, overtime pay, public holidays and vacation pay. (These are parts IV, V, VI, VII, and VIII of the Act respectively.) These employees are:

- 1) Lawyers
- 2) Medical Doctors
- 3) Professional Engineers
- 4) Surveyors
- 5) Architects
- 6) Public Accountants.

Part IV of the Act, relating to Hours of Work, does not apply to a full-time fire-fighter, to persons whose only work is supervisory or managerial, to construction workers or to persons employed in landscape gardening.

Part V of the Act, respecting Minimum Wages, does not apply to a person employed as a student to instruct or supervise children or as a student at a camp for children. It also does not apply to a trainee in a registered nursing assistant course.

Part IV of the Act, which covers Overtime Pay, does not apply to a full-time fire-fighter, to persons whose only work is supervisory or managerial or to persons employed in landscape gardening. It also does not apply to a person employed as a student to instruct or supervise children or as a student at a camp for children.

Part VII of the Act is concerned with Public Holidays and does not apply to a full-time firefighter, to a person employed in landscape gardening or as students to instruct or supervise children or at a camp for children.

Part VIII of the Act, relating to Vacation Pay, does not apply to a trainee leading to registration as a registered nursing assistant.

The most important exemptions mentioned above, and the ones that are most common throughout Ontario municipalities, are, of course, policemen and firefighters. The other occupations mentioned are found in many municipalities, but are not as common. All employees other than those specifically exempted are subject to all the provisions of The Employment Standards Act. This includes inside workers and outside workers alike and applies as well to civilian employees of police and fire departments.

HOURS OF WORK

Part IV of the Act covers the establishing of working hours for employees.

As a general rule, a municipality may not establish regular working hours that are longer than eight hours a day or forty-eight hours a week. If there is a situation that requires longer working hours, a municipality must apply to the Director of the Employment Standards Branch¹ for a permit to exceed these hours. If the Director agrees that longer than normal hours are necessary, he may issue such a permit and make whatever terms and conditions he deems necessary in the circumstances. A permit may authorize daily working hours of up to twelve.

There are two other very important provisions that municipalities must keep in mind. First, a permit authorizing a municipality to establish longer hours does not automatically require employees to work those longer hours. Their permission, or the permission of their agent (i.e., union) must first be obtained. Second, the municipality still must pay overtime in accordance with the overtime provisions of this Act and the Regulations. A permit does not relieve the municipality from this obligation.

In the case of accident or emergency, however, a municipality may require employees to work hours in excess of those described above, or in excess of those authorized in a permit. The only excess hours which would be allowed are those necessary to avoid serious interference with or disruption of normal municipal services.

Finally, employees must not be required to work longer than five hours without an eating period of at least one-half hour.

¹ The Director, Employment Standards Branch,
Ontario Ministry of Labour,
400 University Avenue, Toronto. M7A 1V2
Telephone No.: (416) 965-5251

MINIMUM WAGE

Part V is a very small but very important part of the Act; it deals with minimum wages.

This part of the Act provides that, if a municipality permits an employee to do work for which a minimum wage has been established, it must pay that employee at least the predetermined minimum wage. The minimum wage does change from time to time in order to keep up with inflation and other economic factors. The Ministry of Labour publishes the new rates in newspapers well in advance of any change.

The following are the rates that are now in effect:

<u>Category of Employee</u>	<u>Minimum Wage</u>
General (i.e., any employee or category not mentioned below)	\$3.00 per hour
Student (an employee who is a student under 18 years of age employed less than 28 hours per week or employed during a school holiday)	\$2.15 per hour
Learner ² (this rate applies to a learner only during the first month of employment)	\$2.90 per hour
Ambulance Driver Driver's Helper First-Aid Attendant (employed in ambulance service)	\$144.00 per week or, where hours of work are not more than 48 per week \$3.00 per hour
Construction (including guards on construction site)	\$3.25 per hour

² Persons who are employed for less than 28 hours per week may not be paid as learners. No more than one-fifth of a municipality's employees may be paid as learners.

Employees who are required to report for work less than three hours must be paid for at least three hours work at the minimum rate. This does not apply if the employee is a student or normally works less than three hours per day.

As a means of helping a handicapped person to be gainfully employed, application may be made in writing to the Director to employ a handicapped person at a rate lower than the minimum wage. The application may be made by the handicapped person, the employer or the parents or guardian of the handicapped person. If the application is made by the employer, the consent of the handicapped person or his or her parent or guardian must be obtained.

Minimum Wage rates do change periodically. The rates shown herein are those in effect as at the date of issue of this bulletin.

PUBLIC HOLIDAYS

Part VII of the Act is concerned with Public Holidays, who is entitled to receive them and what happens when an employee has to work on a public holiday.

The Employment Standards Act provides in Section 5, that where a collective agreement or a contract of employment provides for more than seven public holidays in a year, then the collective agreement or the contract of employment applies, notwithstanding any terms in The Employment Standards Act regarding public holiday pay. If your municipality does not have an agreement which is better than seven paid public holidays in a year, then the following applies.

At the present time, employees are entitled to seven public holidays with pay. These holidays are:

- New Year's Day
- Good Friday
- Victoria Day
- Dominion Day
- Labour Day
- Thanksgiving Day
- Christmas Day.

An employee is not entitled to a paid Public Holiday if he or she:

- 1) is employed by the municipality for less than three months;
- 2) does not earn wages (i.e., does not work) on at least twelve days of the four work weeks immediately preceding the public holiday;
- 3) does not work on his or her scheduled day of work preceding or following the public holiday;
- 4) does not report for and perform work on the public holiday after having agreed to do so; (This does not apply if the employee has reasonable cause for not coming to work.)
- 5) is employed under an arrangement where he or she may elect to work or not to work when requested.

Public-holiday benefits apply to full-time, part-time and student employees. As a general rule, where an employee is eligible for a Public Holiday, the municipality must give an employee the day off and pay him or her one day's regular wages. For example, an employee who is not disqualified by any of the above conditions, who normally works 8 hours a day and whose hourly rate of pay is \$5.00, will be given the day off on Labour Day and be paid \$40.00. Another employee who is paid, for instance, \$175.00 per week would receive \$35.00 (\$175.00 divided by 5, the number of working days in a normal work week) as well as getting the day off.

Some employees do not work the same number of hours each day, or are paid on a basis other than time. In these cases, the amount of holiday pay is determined by taking an average of the employee's daily earnings (not including overtime) for the days worked in the 13-week period immediately preceding the public holiday.

Sometimes a municipality may find it necessary to continue operations on a public holiday and require one or more employees to work. In this case, provided that the employee agrees, another working day may be substituted for the public holiday. The substituted day, which may not be later than the employee's next annual vacation, shall be deemed to be the public holiday.

If the public holiday falls on a non-working day, the employee shall be given another normal working day off with pay. As an alternative, and only if the employee agrees, the municipality may simply pay the employee an extra day's wages for the public holiday and not grant another day off.

Premium Pay For Working On A Public Holiday

There will be occasions where an employee who is qualified for a paid public holiday is required to work on a holiday and has no arrangement for a substitute day off at another time. In this case, the employee must be paid time and one-half the regular

rate for all hours worked that day plus the regular day's pay for that public holiday. An employee who does not qualify for a paid holiday must, nevertheless, be paid at least time and one-half of the employee's regular rate for all hours worked on:

- New Year's Day
- Good Friday
- Victoria Day
- Dominion Day
- Labour Day
- Thanksgiving Day
- Christmas Day.

OVERTIME PAY

All full-time, part-time and student employees are entitled to overtime benefits. Overtime, according to the Act, is calculated only on a weekly basis; there is no provision for overtime pay on a daily basis.

As a general rule, an employee must be paid at least time-and-one-half of his or her regular rate for all hours in excess of 44 worked in one week. The regular rate is the employee's normal hourly rate of pay. If a regular hourly rate is not specified, it is calculated by dividing an employee's earnings for a week by the number of hours worked in that week (not counting overtime). For example, the rate of an employee who is paid \$200.00 per week and normally works 40 hours per week would be \$5.00 per hour. The rate for an employee who is paid \$180.00 per week and normally works 37½ hours per week would be \$4.80. And, of course, the regular rate of an employee who is paid by the hour is that hourly rate.

The hours that an employee has worked on a public holiday, for which he or she has received premium pay, are not included for the purpose of calculating overtime pay for the same work week.

(In special cases, the Director of Employment Standards may approve an arrangement for the averaging of hours of work over a period of two or more weeks for overtime pay purposes. Before approval can be granted, the following conditions must be met:

- a) a regular work schedule is established over the averaging period;
- b) the employees or their agent are in agreement with arrangement.)

Special Provisions For Employees Working In Road Building And Sewer And Watermain Construction And Ambulance Service

There are special regulations applicable to employees who are engaged in the above occupations. Generally, the following apply:

- a) The Act does not require that employees who are engaged as ambulance drivers, drivers' helpers and first-aid attendants be paid a premium for overtime.
- b) employees engaged at a road-building site in relation to streets, highways or parking lots shall be paid overtime for all hours worked in excess of 55 in a work week at a rate of no less than one and one-half times the regular rate.
- c) employees engaged at a road-building site in relation to structures such as bridges, tunnels or retaining walls in connection with streets or highways shall be paid overtime for all hours worked in excess of 50 in a work week at a rate of no less than one and one-half times the regular rate.
- d) employees engaged in laying, altering, repairing or maintaining sewers and watermains, or in guarding such a construction site, shall be paid overtime for all hours worked in excess of 50 in a work week at a rate no less than one and one-half times the regular rate.

(Note, in the case of b) and c) above, there are also provisions allowing for averaging over a two-week period. Interested municipalities should refer to O. Reg. 803/75, section 15 or make enquiry to one of the field offices of the Employment Standards Branch listed later in this bulletin.)

Finally, it is a common practice in many organizations, including municipalities, to grant time off (with pay) instead of paying for overtime. There is nothing wrong with this practice; however, where such time off is granted, it too must be at the rate of one and one-half. For example, if an employee has worked 4 hours of overtime, he must be given 6 hours time off with pay.

VACATION PAY

Upon completion of each twelve months of employment, each employee is entitled to at least two weeks vacation with pay. The vacation pay must be at least four percent of total earnings during the twelve-month period for which the vacation is being granted. The municipality may decide when the vacation is to be taken, but it must be given within ten months after the employee has earned it. The vacation may be given in one period of two weeks or in two periods of one week each.

An employee who leaves the employ of the municipality before completing a twelve-month period of employment must be paid four percent of the total wages earned during the period. This must be paid within one week of the date the employee leaves.

Total wages, or total earnings, referred to in the foregoing, includes all money received by an employee from the municipality, as well as the value of room and board, and also includes overtime. It does not, however, include:

- a) tips and gratuities;
- b) any money paid to an employee solely at the discretion of the employer and not based on any performance over which the employee has control;
- c) expenses and travel allowances;
- d) money paid on behalf of an employee to an insurance plan;
- e) previously paid vacation pay.

Vacation-pay benefits apply to full-time, part-time and student employees.

EQUAL PAY FOR EQUAL WORK

A municipality may not differentiate between its male and female employees by paying a female at a rate of pay less than the male, or vice versa, provided they do substantially the same kind of work in the same place. Further requirements for equal pay are that the performance of the work requires substantially the same skill, effort and responsibility and the work is performed under similar working conditions. In other words, men and women must be paid the same rate for doing the same job.

A municipality may pay different rates provided that the difference is based upon:

- a) a seniority system;
- b) a merit system;
- c) a system that measures earnings by quantity or quality of production; or
- d) a differential based on any factor other than sex.

(It is important to note here that a differential also must not violate any of the provisions of The Ontario Human Rights Code.)

BENEFIT PLANS

A municipality may not differentiate between its employees, or classes of employees, or their beneficiaries because of age, sex or marital status in respect of a benefit fund or plan offered as a condition of employment or on a voluntary basis. (This means, for example, that the municipality may not have a group life-insurance plan for male employees only or exclude employees over 40 from participation in a pension plan.)

This applies to plans which provide for superannuation, retirement, unemployment, income replacement, death, disability, sickness, accident, medical, hospital, nursing or dental expenses or other similar benefits.

PREGNANCY LEAVE

An employee is qualified to receive pregnancy leave when she has been employed by a municipality for a period of at least 12 months and 11 weeks immediately preceding the estimated date of delivery. Where an employee, who is so qualified, requests pregnancy leave, the municipality must grant a leave of absence without pay for a period of 17 weeks. It is very important to note that the employment of an employee who qualifies for pregnancy leave cannot be terminated nor can she be laid off because of the pregnancy.

The employee has a choice when she may wish to commence her leave. If she is able to perform the work, she may work right up to term. The municipality may not require her to commence her leave before she wishes, unless the municipality can prove that she is not capable of performing her normal duties.

The leave of absence may start at any time during the 11 weeks prior to the estimated date of delivery; however, the period of absence following the actual date of delivery must be at least 6 weeks. This six-week period may be shortened only if the employee gives the municipality one-week's notice of her intention to return to work early and provides a certificate from her doctor stating that he or she approves.

When an employee wants to take pregnancy leave, she must give two-weeks notice of her intention, in writing, to the municipality. She must also provide a certificate from her doctor estimating the date of delivery. Notwithstanding this provision, even where no application for leave has been made by the employee, the municipality must grant a leave of absence if the employee provides a medical certificate stating she was unable to work and giving the estimated (or actual) date of delivery. This must be provided within two weeks of the date she stopped working.

While the Act does provide normally for a leave of 17 weeks, it may be shorter, at

the option of the employee, provided that at least six weeks leave is taken following the actual delivery. This means that the employee may take less than 11 weeks prior to delivery. On the other hand, if the actual date of delivery is later than estimated, the total length of leave may be longer than 17 weeks. This is because the leave must not end until 6 weeks following actual delivery.

When the employee returns to work, the municipality must reinstate her to the same job she held previously, at the same rate of pay and with the same seniority and benefits that had accrued as of the date of going on leave. If the same job is not available, the employee must be placed in a comparable job. The municipality does not have to pay wages or salary to an employee while she is on pregnancy leave.

Pregnancy leave applies to full-time, part-time and student employees.

TERMINATION OF EMPLOYMENT

A municipality must give written notice of its intent to terminate the employment of any employee who has worked for the municipality for three months or more. The notice of termination must be at least:

1. one week, if the employee has worked less than two years;
2. two weeks, if the employee has worked two years but less than five years;
3. four weeks, if the employee has worked five years, but less than ten years;
4. eight weeks, if the employee has worked ten years or more.

This notice must be given to full-time, part-time and student employees.

The employee's employment can be terminated only after written notice has been given and the time of notice has expired. However, if a municipality wishes to terminate an employee's employment immediately (that is, without notice), there is an alternative. Written notice of termination must still be given; however, the employee may simply be paid for the appropriate period of notice (indicated above) and not be required to report for work. The wages paid must be normal wages for a non-overtime week for the number of weeks the employee is entitled to notice. Full vacation-pay entitlement must also be given to the employee. (Where a municipality is terminating the employment of 50 or more employees in a period of four weeks or less, special conditions apply, and reference should be made directly to the Act and Regulations.)

A municipality is not required to give notice to an employee if:

- a) the employee was hired for a specific length of time or for a specific project requiring less than twelve months work;

- b) the employee is laid off temporarily (i.e., for 13 weeks or less -- a layoff of more than 13 weeks is treated as a termination);
- c) the employee is guilty of wilful misconduct, wilful disobedience, or wilful neglect of duty that has not been condoned;
- d) the work agreement is impossible of performance or is frustrated by an unforeseeable event or circumstance (fire, flood, etc.);
- e) the employee is engaged in construction work;
- f) the employee retires in accordance with the normal practice of the municipality;
- g) the employee has refused reasonable alternate work;
- h) the employee does not return from layoff within a reasonable time when requested to do so by the municipality;
- i) the employee may elect to work or not for a temporary period as a condition of employment.

RECORDS

A municipality must make and keep complete records for each employee for 24 months after the work is done. These records must show:

1. name and address;
2. date of birth, if the employee is a student under 18;
3. the hours worked each day and week;
4. the rate of pay and gross earnings;
5. the amount and purpose of each deduction;
6. any living allowance or other payment to which the employee is entitled;
7. the net pay;
8. any documents or certificates relating to maternity leave.

In addition to the foregoing, a municipality must keep records, for 5 years, showing the employee's name and address and original date of employment and the wages paid for each period, indicating vacations with pay or any payments made to the employee on account of vacation pay. A municipality is not required to record the daily or weekly hours of salaried clerical or administrative employees except where the employee works more than 8 hours in a day or 44 hours in a week.

GENERAL

The following are some general provisions of the Act by which municipalities must be guided.

- An employee cannot be dismissed or suspended because of a garnishment issued against the employee's wages.
- A municipality must give each employee a wage statement showing what the wages are paid for, the rate, the gross wages, the purpose and amount of each deduction and the net amount paid to the employee.
- A municipality must give each employee a vacation-pay statement at the time the vacation pay is paid. The statement must show the time or work for which vacation pay is paid, the total pay on which the vacation pay is calculated, the amount of each deduction and its purpose and the net amount of vacation pay.
- Any provision of an employment agreement that gives an employee a greater benefit than the minimum standards that apply in The Employment Standards Act will be the standard that applies to that employee.
- No deductions can be made from an employee's wages except those required by law, or those agreed to by the employee in writing. An employee's written agreement for deductions is invalid if it is for damages claimed by the municipality or for cash shortages where any other person has access to the cash.
- The rights extended to an employee by The Employment Standards Act cannot be waived.

FINALLY ...

As was pointed out at the beginning of the bulletin, this guide is intended to act as a ready reference for convenience purposes only. The Act itself is the ultimate authority, and it should be consulted for accurate reference.

If you require additional information or ruling that is not covered by the bulletin or immediately evident from the Act and Regulations, you may wish to seek legal advice. Alternatively, you may contact the Employment Standards Branch, Ontario Ministry of Labour, at one of the following addresses.

Toronto

400 University Avenue
M7A 1V2
Telephone: (416) 965-5251

Hamilton

1 West Avenue South
L8N 2R9
Telephone: (416) 527-2951

Kenora

808 Robertson Street
P9N 1X9
Telephone: (807) 468-3128

Kingston

1055 Princess Street
K7L 1H3
Telephone: (613) 542-2853

Kitchener

824 King Street West
N2G 1G1
Telephone: (519) 744-8101

London

205 Oxford St. E.
N6A 5G6
Telephone: (519) 439-3231

Ottawa

2197 Riverside Drive
K1H 7X3
Telephone: (613) 523-7530

Sault Ste. Marie

390 Bay Street
P6A 1X2
Telephone: (705) 949-3331

Sudbury

1538 LaSalle Boulevard
P3A 1Z7
Telephone: (705) 675-4455

Thunder Bay

435 James Street South
P7E 6E2
Telephone: (807) 475-1691

Timmins

273 Third Avenue
P4N 1E2
Telephone: (705) 267-6231

Windsor

500 Ouellette Avenue
N9A 1B3
Telephone: (519) 256-8278

This bulletin was prepared in the:

Municipal Administration Branch
 Ministry of Intergovernmental Affairs
 3rd Floor, Mowat Block
 Queen's Park
 Toronto, Ontario
 M7A 1C2 Tel. 416-965-3514

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 Toronto, Ontario
 M7A 1N8

(Please make cheques payable to the Treasurer of Ontario)

Financial Procedures Bulletins

A series of Financial Procedures Bulletins is being issued by the Municipal Budgets and Accounts Branch. Copies are available at \$1.00 each from the Publications Centre. Titles now available are:

- F.1 Cash Management in Municipalities
- F.2 Bank Reconciliation Procedures for Municipalities
- F.3 Municipal Investments
- F.4 Zero-Base Budgeting
- F.5 Reserves, Reserve Funds, Allowances and Other Special Funds, July 1979, 30 pp.

Price subject to change without notice.

For additional information on this subject, get in touch with any of the field officers of the Local Government Division. They are located at these addresses.

BRANTFORD

172 Dalhousie St.
Brantford, Ontario
N3T 2J7
(519) 756-0360

OSHAWA

74 Simcoe St. S.
P.O. Box 2216
Oshawa, Ontario
L1H 7V5
(416) 571-1515

GUELPH

30 Edinburgh Road N.
Guelph, Ontario
N1H 7J1
(519) 836-2531

OTTAWA

244 Rideau St.
Ottawa, Ontario
K1N 5Y3
(613) 566-3711

LONDON

495 Richmond St.
London, Ontario
N6A 5A9
(519) 438-7255

SUDBURY

Ontario Government Building
5th Floor
199 Larch Street
Sudbury, Ontario
P3E 5P9
(705) 675-4343

NORTH BAY

347 Sherbrooke Street
North Bay, Ontario
P1B 2C1
(705) 476-4300

THUNDER BAY

435 James St. S.
P.O. Box 5000
Thunder Bay, Ontario
P7C 5G6
(807) 475-1621

ORILLIA

15B Matchedash St. N.
Orillia, Ontario
L3V 4T4
(705) 325-6144

